SUPREME COURT, U. S.
AUG 31 1970
E. ROBERT SEAVER, CLERK

Nos. 389 and 5633

In the Supreme Court of the United States

OCTOBER TERM, 1970

JEROME TREMONT, PETITIONER

v.

UNITED STATES OF AMERICA

RONALD LEACH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,

WILL WILSON,
Assistant Attorney General,

BEATRICE ROSENBERG,
ROBERT G. MAYBACK,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A, No. 389) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on June 15, 1970 (Pet. App. B, No. 389). In No. 389, the petition for a writ of certiorari was filed on July 14, 1970. In No. 5638, Mr. Justice Brennan ordered the time for filing a petition for a writ of certiorari extended to and including July 31, 1970, and the petition was filed on July 30, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

In No. 389:

1. Whether, in a prosecution for making false statements in an FHA credit application and conspiracy to do so, the government improperly failed to disclose before trial that an accomplice would be a government witness where the indictment alleged that the conspirators other than the two petitioners were unknown.

In Nos. 389 and 5638:

2. Whether the trial court acted within its proper discretion in granting only part of the defense request for a bill of particulars.

3. Whether the evidence was sufficient to support petitioners' convictions under 18 U.S.C. 1010.

4. Whether the court erred in failing to give an instruction on the theory of petitioners' defense.

STATEMENT

After a jury trial in the United States District Court for the District of Massachusetts, petitioners Tremont and Leach were convicted of making false statements in an application for a Title I FHA home improvement loan in violation of 18 U.S.C. 1010 and of conspiracy to violate that section. The charges related to a $3,000 loan obtained from the Lynn Safe Deposit and Trust Company in May 1968, purportedly to improve a building petitioners were purchasing. Count I of the indictment charged them with stating in the loan application that the proceeds would be used to improve the property, knowing this representation to be false. Count II charged the making of a false statement by omitting to list an outstanding indebtedness on the application as required by law. Count III charged a conspiracy with "divers other persons unknown" to make the false statements. Each petitioner was sentenced to concurrent two year prison terms and fined $5,000. The court of appeals affirmed (Pet. App. A).

The evidence showed that Tremont, on behalf of New Boston Realty Trust, agreed to buy property at Pickman Street in Salem owned by Empire Homes. He paid a $100 deposit on the total price of $14,000 and agreed to assume a first mortgage of $11,200 and execute a second mortgage for $2,000 (Tr. 2-22-23, 62-63).[1] Tremont and Leach subsequently talked

[1] "Tr." refers to the transcript of the trial testimony, which is contained in Volume II of the Record in No. 389 on file before this Court.